

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 12, 2010

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ❑ **CALL TO ORDER:**
- ❑ **PRAYER:**
- ❑ **PLEDGE OF ALLEGIANCE:**
- ❑ **ROLL CALL:**
- ❑ **HONORS AND AWARDS:**
- ❑ **INTRODUCTIONS/PRESENTATION:**
- ❑ **CONSENT AGENDA:**
 - A. Approval of Minutes. CITY CLERK
 - B. Homeless Continuum of Care Network and City of Muskegon – Memorandum of Understanding (MOU) and Appointment of City Commission Representative. PLANNING & ECONOMIC DEVELOPMENT
 - C. CDBG Program Administration Agreement – City of Muskegon/City of Norton Shores. PLANNING & ECONOMIC DEVELOPMENT
 - D. West Michigan Metropolitan Transportation Plan (WestPlan) Dues, FY 2011. CITY MANAGER
 - E. Amend Article III of Chapter 74 of the City's Code of Ordinance. ENGINEERING
 - F. Budgeted Vehicle Replacement – Chevrolet Impalas. PUBLIC WORKS
 - G. Budgeted Equipment Setup. PUBLIC WORKS
 - H. Merit Network Inc. – METRO Act Permit. ENGINEERING
- ❑ **PUBLIC HEARINGS:**
- ❑ **COMMUNICATIONS:**
- ❑ **CITY MANAGER'S REPORT:**
- ❑ **UNFINISHED BUSINESS:**
- ❑ **NEW BUSINESS:**

A. Richards Park License and Management Agreement. PUBLIC WORKS

B. Consideration of 2011 COLA for Retirees. FINANCE

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

- ***Reminder: Individuals who would like to address the City Commission shall do the following:***
- Fill out a request to speak form attached to the agenda or located in the back of the room.
- Submit the form to the City Clerk.
- Be recognized by the Chair.
- Step forward to the microphone.
- State name and address.
- Limit of 3 minutes to address the Commission.
- (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE BECKER, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TDD: (231) 724-4172.

Date: October 12, 2010
To: Honorable Mayor and City Commissioners
From: Ann Marie Becker, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the City Commission Meeting that was held on Tuesday, September 28, 2010.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 28, 2010

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, September 28, 2010.

Mayor Warmington opened the meeting with a prayer from Commissioner Clara Shepherd after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Warmington, Vice Mayor Stephen Gawron, Commissioners Lawrence Spataro, Sue Wierengo, Steve Wisneski, Chris Carter, and Clara Shepherd, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Becker.

2010-83 HONORS AND AWARDS:

A. Honorary Ambassador Award – Root Park.

Commissioner Lawrence Spataro presented Honorary Ambassador Awards to Mark Fazakerley, Burl Krause and Brian Krause for the renovation of the fountain at Root Park.

2010-84 CONSENT AGENDA:

A. Approval of Minutes. CITY CLERK

SUMMARY OF REQUEST: To approve minutes for the September 13th Commission Worksession Meeting and the September 14th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Smartzone – Pre-Seed Fund Agreement between the City of Muskegon and the Michigan Alternative & Renewable Energy Center (MAREC).

PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: In 2007, the City of Muskegon received \$25,000 from a \$100,000 grant to assist with the administration of the Pre-Seed Loan fund

through the State Smartzone program. The City contracted with Muskegon Area First to administer these funds. MAF spent \$10,000 on assisting clients with their applications for Pre-Seed loans. Recently, the MEDC forwarded the remaining \$75,000 to the City. Since MAREC has a new director and staff, it would be appropriate for them to become administrators of this fund. The funding can be used for administration, as well as to assist potentially eligible applicants through the loan application process. With MAREC's new direction, they can best reach the clients who would qualify for the Pre-Seed Loan (business start-ups, incubators, etc).

FINANCIAL IMPACT: The City has a total of \$90,000 from the State of Michigan for administration and client assistance of the Pre-Seed Fund. These funds will be used by MAREC for administrative services and client assistance.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Letter of Agreement between the City of Muskegon and MAREC and authorize the Mayor to sign.

C. Senior Nutrition Program – Agreement between AgeWell Services of West Michigan (AWS) and the City of Muskegon. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The City of Muskegon has contracted with AgeWell Services for several years to conduct the senior nutrition program at the McGraft Park Community Building. This Agreement will extend those services through September 30, 2011.

FINANCIAL IMPACT: The City of Muskegon financially supports the program in the amount of \$8,316. AWS pays the City \$200 a month for rent and utilities.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the Agreement and authorize the Mayor's signature.

D. Amendments to the Zoning Ordinance – Transitional Living Centers. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Section 1306 (Special Land Use Permitted) of Article XIV (B-5, Governmental Service District) of the zoning ordinance, to allow Transitional Living Centers as a special use permitted in B-5, Governmental Service Districts, by West Michigan Therapy, Inc.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission recommended

approval of the request at their September 16th meeting.

E. Amendments to the Zoning Ordinance – Definition for Transitional Living Center. PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Request to amend Article II of the zoning ordinance to create a definition for Transitional Living Center, by West Michigan Therapy, Inc.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION: The Planning Commission recommended approval of the request at their September 16th meeting.

Motion by Commissioner Carter, second by Commissioner Shepherd to approve the Consent Agenda as read.

ROLL VOTE: Ayes: Warmington, Wierengo, Wisneski, Carter, Gawron, Shepherd, and Spataro

Nays: None

MOTION PASSES

2010-85 NEW BUSINESS:

A. Congress of Cities Voting Delegates. CITY CLERK

SUMMARY OF REQUEST: To designate one of our officials who will be in attendance at the National League of Cities Annual Business Meeting on Saturday, December 4th, to cast the City's vote; and, if possible, to designate an alternate.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

Motion by Commissioner Carter, second by Commissioner Wierengo to appoint Commissioner Shepherd to represent the City at the National League of Cities to cast the City's vote.

ROLL VOTE: Ayes: Wierengo, Wisneski, Carter, Gawron, Shepherd, Spataro, and Warmington

Nays: None

MOTION PASSES

B. Liquor License Transfer Request – BETAK Enterprises, Inc., 1813 Getty Street. CITY CLERK

SUMMARY OF REQUEST: The Liquor Control Commission is seeking local

recommendation on a request from BETAK Enterprises, Inc. to transfer ownership of the Escrowed 2010 SDD License from Rite Aid of Michigan, Inc., 821 E. Apple Avenue to 1813 Getty Street and to be held in conjunction with existing 2010 SDM License.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: All departments are recommending approval.

Motion by Vice Mayor Gawron, second by Commissioner Spataro to approve the liquor license transfer request for BETAK Enterprises, Inc.

ROLL VOTE: Ayes: Wisneski, Carter, Gawron, Shepherd, Spataro

ANY OTHER BUSINESS: Commissioner Spataro thanked City Staff, Bernadette Young, and her department for the work that was done at Root Park.

Mayor Warmington recognized Commissioner Shepherd who was presented an Award of Merit at the MML Annual Meeting.

ADJOURNMENT: The City Commission Meeting adjourned at 5:45 p.m.

Respectfully submitted,

Ann Marie Becker, MMC
City Clerk

Commission Meeting Date: October 12, 2010

Date: September 30, 2010
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: Homeless Continuum of Care Network and City of
Muskegon- Memorandum of Understanding (MOU)
and Appointment of City Commission
Representative

SUMMARY OF REQUEST: The City of Muskegon has had a voting seat on the Homeless Continuum of Care Network Review Committee for several years. The current MOU is outdated. In order to retain the City seat on the Review Committee, a new MOU must be approved. Commissioner Larry Spataro has served as the City representative in the past.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached MOU and authorize the Mayor's signature and appoint Commissioner Spataro as the City of Muskegon representative to the Review Committee

MEMORANDUM OF UNDERSTANDING

Muskegon County Homeless Continuum of Care Network And City of Muskegon

I. BACKGROUND AND INTENT

This Agreement for participation in the development, implementation and management of programs to end homelessness in Muskegon County is entered into between member agencies of the Muskegon County Homeless Continuum of Care Network.

Whereas, the Continuum has formally adopted the Blueprint for Ending Homelessness, a 10 Year Plan which sets forth goals and objectives toward preventing and ending homelessness in the County; and,

Whereas, the sole purpose of this Memorandum of Understanding is to encourage cooperation between each member of the Continuum and to further detail the separate and distinct roles and responsibilities of each party with regards to the operation and implementation of projects to prevent and end homelessness in our community; and,

Whereas, each member of the Continuum understands that certain activities must be undertaken in order to meet federal, state and local requirements for funding; and,

Whereas, the Continuum must prioritize the utilization of its limited resources to maintain a comprehensive service delivery system for the most-in-need within the at-risk and homeless populations; and,

Whereas, the Muskegon County Homeless Continuum of Care Network is required by federal and state statutes to maintain a collaborative process for developing the Homeless Assistance Grant (HAG) application; evaluate project outcomes funded under the Emergency Solutions Grant and HAG; ensure the operation of and timely participation in the HMIS, and utilize ESG and HAG funding to support and implement an effective prevention and rapid re-housing service delivery system, the member agencies agree to participate in the functions of the MCHCCN and to follow the requirements of the By-Laws of the MCHCCN.

Whereas, each member of the Continuum as pertinent agrees to:

- Participate in the HMIS/Service Point system so that data can be submitted to the Department of Housing and Urban Development and the Michigan State Housing Development Authority in the manner in which they prescribe; and
- Participate in each Point in Time count as mandated by HUD or as prescribed by the Continuum of Care; and

- Provide accurate data to the Continuum in a timely fashion as determined by the Continuum. Accuracy and timeliness of data is understood to be of critical importance to funding agencies such that failure to provide the data in such a fashion could result in a loss of funding; and
- Participate in the development and implementation of evidenced based or HMIS data driven strategies that effectively contribute to preventing and ending homelessness; and
- Advocate on behalf of the homeless and participate in the Continuum's Homeless Awareness activities and in the Homeless Prevention activities; and
- Actively participate in the Continuum's committees. The member understands that participation in the Continuum is one of the review criteria establishing priorities for funding; and
- Act as a liaison with the community at large and with their respective agencies to provide information about the Continuum's activities; and
- Participate in the development of the evaluation and selection criteria to determine priorities for the Continuum; and
- Participate in funding opportunities following state and federal criteria; and
- Work with other agencies in the community to align local, state and federal resources to develop and support a comprehensive community-based service delivery system that effectively stabilizes individuals and families in their current housing; or quickly moves such persons to other permanent housing; or rapidly re-houses those who have lost their housing. This includes a commitment to reduce the use of emergency shelter beds as a means of balancing emergency shelter beds with permanent supportive housing units throughout Muskegon County; and,
- Work with the Continuum to ensure that there are no gaps in service to the homeless or at risk of homeless population in our community; and
- Work diligently to identify, develop and coordinate interagency service delivery teams; and,
- Participate in the Consolidated Plan for the geographic area(s) covered by the MCH CoC Network; and,
- Stay up to date on the latest research and experiential based best practices for the delivery of relevant services.

II. GUIDING PRINCIPLES

WHEREAS, all parties under this Memorandum of Understanding jointly recognize that individuals with very low-incomes, and representing the specified target populations, are diverse in terms of their strengths, motivation, goals, backgrounds, needs and disabilities;

- those individuals are members of the community with all the rights, privileges, opportunities accorded to the greater community;
- those individuals have a right to meaningful choices in matters affecting their lives; and
- input of the individuals shall be sought in designing and implementing services.

III. TERM. This Agreement will begin July 1, 2005, and will continue until terminated in accordance with Section VII below.

IV. TERMINATION. The partners may terminate their participation with this Agreement for any reason by giving the other parties ninety (90) days prior written notice.

V. CONFIDENTIALITY. The partners agree that they will not at any time disclose confidential information and/or material without the consent of that party unless such disclosure is authorized by this Agreement or required by law. Unauthorized disclosure of confidential information shall be considered a material breach of this agreement. Where appropriate, releases will be secured before confidential information on an Individual is exchanged. Confidential information will be handled with the utmost discretion and judgment and in consort with each partner's confidentiality requirements.

VI. NONDISCRIMINATION. There shall be no discrimination of any Individual on account of race, color, creed, religion, sex, marital status, sexual orientation, age, handicap, ancestry or national origin in the operation of the apartments.

VII. SEVERABILITY. In the event any provision of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality and enforceability of the remainder of the Agreement.

VIII. AMENDMENTS. This Agreement may be amended only with the mutual written consent of the partners pursuant to the Muskegon County Homeless Continuum of Care Network By-Laws.

IX. CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT. The persons signing this Agreement on behalf of the partners hereto certify by said signatures that they are duly authorized to sign this Agreement.

Stephen J. Warmington, Mayor

Date Signed: _____

Revision Date: August 12, 2010

Commission Meeting Date: October 12, 2010

Date: September 27, 2010
To: Honorable Mayor & City Commission
From: Planning & Economic Development Department
RE: CDBG Program Administration Agreement- City of
Muskegon/City of Norton Shores

SUMMARY OF REQUEST: The City of Muskegon has contracted with the City of Norton Shores to administer their Community Development Block Grant (CDBG) program since 2006. The Agreement to administer the program was renewed in 2008 and extended to June 30, 2009. However, although the City of Muskegon has continued to administer the Norton Shores CDBG program, the Agreement has not been renewed since that time. Therefore, the attached Agreement is effective July 1, 2009 and extends through June 30, 2011.

FINANCIAL IMPACT: The City of Norton Shores pays \$22,000 a year to the City of Muskegon to administer their CDBG program.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached Agreement and authorize the Mayor and City Clerk to sign.

CDBG Program Administration Agreement

Between the
City of Norton Shores
And
City of Muskegon

An agreement made and entered into this _____ day of _____, 2010, by and between the City of Muskegon; a Michigan municipal corporation ("Muskegon"), and the City of Norton Shores, a Michigan municipal corporation ("Norton Shores"), with reference to the following facts;

Background

Norton Shores desires that Muskegon assume responsibilities for the administration of the Norton Shores' Community Development and Block Grant ("CDBG") Program.

Therefore, the parties agree as follows:

1. **Administration of CDBG Program.** Muskegon agrees to assume responsibility for the preparation and submission of the following CDBG documents on behalf of Norton Shores:
 - a. Federal Application 424, narratives, project tables, certifications, Environmental Summary, Combined Notice of no Significant Findings and Intent to Release Funds.
 - b. Consolidated Annual Performance and Evaluation Report, publish hearing notice narratives, reports including performance measures criteria (using CPMP format).
 - c. Semi-Annual Labor Standard Enforcement Report (form 4710).
 - d. Contract and Subcontract Activity Report (form 2516).
 - e. CDBG liens for projects, in accordance with HUD guidelines and regulations, as well as any other applicable Norton Shores requirements.
 - f. Preparation of quarterly reports to comply with CAPER, maintaining sub-recipient contract format for the City of Norton Shores' contract with the American Red Cross.

Norton Shores shall provide Muskegon with a copy of all forms previously used by Norton Shores, and Muskegon shall provide a copy of the above reports to Norton Shores upon completion.

2. **Terms of CDBG Fund Payments.** Muskegon shall submit payment request for release of CDBG funds to Norton Shores' Finance Department, and Norton Shores shall remit payment within 10 days of a payment request by Muskegon.
3. **Administration Fee.** Norton Shores shall pay Muskegon \$22,000 per program year for administration of CDBG program. Payment shall be made by way of quarterly payments beginning on July 1, 2010.
4. **Terms of the Contract.** The parties agree that this contract shall be effective July 1, 2009 through June 30, 2011. In addition, either party may terminate this Agreement at any time, and for any reason, upon 45 days written notice to the other party. Upon termination of the contract, Muskegon shall owe Norton Shores a pro rata return of the unearned Administration Fee paid to date.

5. **Building Inspection.** Norton Shores' Building Inspection Department will perform all inspections for CDBG projects and submit the inspection reports to Muskegon for inclusion in the relevant project file.
6. **Purchasing Guidelines.** Muskegon and Norton Shores agree to evaluate the current CDBG program purchasing guidelines used by Norton Shores and establish a written quotation and sealed project bid system acceptable to both parties.
7. **General Provision.**
 - a. **Non-Waiver.** No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of this Agreement.
 - b. **Severability.** Should any provision of this Agreement be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired or affected.
 - c. **Assignment or Delegation.** Neither party may assign all or any portion of its rights and obligations in this Agreement without the express prior written approval of the other party which approval may be withheld for any reason.

City of Muskegon

City of Norton Shores

By _____
Stephen J. Warmington, Mayor

By _____
Gary Nelund, Mayor

By _____
Anne Marie Becker, Clerk

By _____
Lynne A. Fuller, Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: October 4, 2010

RE: West Michigan Metropolitan Transportation Plan (WestPlan) Dues, FY 2011

SUMMARY OF REQUEST:

To approve remittance of the City of Muskegon's portion of the WestPlan dues for Fiscal Year 2011, payable to West Michigan Shoreline Regional Development Commission. This agency determines projects and distributes federal transportation funds.

FINANCIAL IMPACT:

\$16,040.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve this request.

COMMITTEE RECOMMENDATION:

None.

WMSRDC
WEST MICHIGAN SHORELINE
REGIONAL DEVELOPMENT COMMISSION

INVOICE

P.O. Box 387
Muskegon, MI 49443-0387
Phone: 231-722-7878 Fax: 231-722-9362

DATE: October 1, 2010
INVOICE # 5525
FOR: MPO Dues FY 2011

Bill To:
Bryon Mazade, Manager
City of Muskegon
PO Box 536
Muskegon, MI 49443

PAYABLE UPON RECEIPT

DESCRIPTION	AMOUNT
MPO Dues - West Michigan Metropolitan Transportation Program (WestPlan) For Fiscal Year 2011 (October 1, 2010 - September 30, 2011)	<u>\$16,040.00</u>
CR: 6405.0405.1 \$13,910 6405.0405.3 \$2,130	
TOTAL	\$16,040.00

Make all checks payable to **West Michigan Shoreline Regional Development Commission**
If you have any questions concerning this invoice, contact Susan Stine-Johnson, 231-722-7878 x14
sstinejohnson@wmsrdc.org

RECEIVED

OCT 04 2010

MUSKEGON
CITY MANAGER'S OFFICE

Date: October 12, 2010

To: Honorable Mayor and City Commissioners

From: Engineering

RE: Amend Article III of Chapter 74 of the City's Code of Ordinance

SUMMARY OF REQUEST:

Adopt the proposed amendments to Sections 74-84, 85 & 86 of Chapter 74, Article III of the City's Code of Ordinances providing one more option to enforce the repairs and collection of hazardous sidewalks by billing the owner(s) without creating a special assessment district. This proposed alternative as, outlined in section 74-86, will help the City deal with hazardous sidewalks after issuing a notice to the owner and subsequently make the repairs, thus preventing costly claims.

FINANCIAL IMPACT:

None at this time since the assumption is that the owner of record will be billed for the actual cost. However, the possibility is there that the owner(s) may default.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the proposed amendments to articles 74-84, 85 & 86 of Chapter 74 of the City's Code of Ordinance.

COMMITTEE RECOMMENDATION:

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 74, Article III of the Code of Ordinances of the City of Muskegon, Michigan is amended by amending sections 74-84 through 74-86 to read as follows:

Sec. 74-84. Authority to assess costs against owner of abutting property.

All hazardous sidewalks in the City right-of-way in the city may be graded, constructed and repaired, and the expense thereof, except where the work is done by the owner, agent or occupant of the premises contiguous thereto, shall be recovered as permitted by Section 74-86.

Sec. 74-85. Notice to owners or occupants of property contiguous to defective sidewalk.

(a) The city may, in its discretion, give written notice to the owner or the person or persons listed on the tax rolls that a sidewalk contiguous to a certain property is defective or in need of repair. The letter shall set a time before which the repair must be completed by the owner or occupant, and shall inform the addressee that the specifications for repair and a permit must be obtained from the city.

(b) The notice shall further inform the owner, occupant or person on the tax roll that the city, after the deadline date has passed, may perform the work and recover the associated costs thereof, including assessment costs, as permitted by Section 74-86.

Sec. 74-86. Work by city.

If the owner, occupant or person named on the tax roll fails, refuses or neglects to build, repair, raise, lower or relay the sidewalk within the time specified in the notice, the city may then cause the work to be done and recover the costs of such by 1) creating a special assessment and levy such assessment against the property, 2) collecting the cost from the person or persons listed on the tax rolls as the owner, and/or 3) placing a lien on the property.

2. This Ordinance is to become effective ten (10) days after adoption.

Ayes:

Nays:

First Reading:

Second Reading:

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the ____ day of _____, 2010, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2010

Ann Marie Becker, MMC
City Clerk

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2010, the City Commission of the City of Muskegon adopted amendments to Chapter 74, Article III of the Muskegon City Code concerning Sidewalk Improvements, summarized as follows:

1. Section 74-84 is amended to permit the city to recover the costs for sidewalk repairs as provided by Section 74-86.
2. Section 74-85 is amended to permit the city to provide notice that a sidewalk is defective or in need of repair and, if not corrected, will be corrected by the City and the costs shall be recovered as provided by Section 74-86.
3. Section 74-86 is amended to permit the city to recover the costs for sidewalk repairs by way of a special assessment, pursuing the property owner as indicated on the tax roll or placing a lien on the property.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

Published: _____, 2010

CITY OF MUSKEGON

By _____
Ann Marie Becker, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Date: 10/12/10
To: Honorable Mayor and City Commission
From: DPW
RE: Budgeted Vehicle Replacement

SUMMARY OF REQUEST: Approval to purchase two 2011 Chevrolet Impalas from Don Rypma Chevrolet.

FINANCIAL IMPACT: \$36,920.00

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve purchase of two Chevrolet Impalas from Don Rypma Chevrolet.



Memorandum



To: Honorable Mayor and City Commissioners

From: DPW

Date: 10/12/10

Re: Budgeted Vehicle Replacement



The Equipment Division has scheduled the replacement of two 2003 sedans for 2010-2011. These vehicles will be used by the Detective Bureau to conduct follow up investigations, to perform covert operations, for surveillance, and to free up marked units to perform patrols.

I have requested prices from area dealers as well as the statewide purchasing contract. Local dealers failed to respond to the bid packages delivered to them. Attached is a summary of the bids.

In accordance with established purchasing policy, we are requesting permission to purchase two Chevrolet Impalas from Don Rypma Chevrolet.

Equipment Purchase - 2010-2011			
	<u>Berger Chevrolet</u>	<u>Don Rypma</u>	
	<u>2525 28th S.E</u>	<u>8130 Whitehall Rd.</u>	
<u>Type of Vehicle</u>	<u>Grand Rapids,Mi 49512</u>	<u>Whitehall,Mi 49461</u>	
2 Chevrolet Impalas	\$18,673.33	\$18,460.00	
Total	\$37,347.32	\$36,920.00	

Date: 10/12/10
To: Honorable Mayor and City Commission
From: DPW
RE: Budgeted Equipment Setup

SUMMARY OF REQUEST: Authorize staff to purchase 5 service bodies from Arista Truck Systems and 1 plow from Hoekstra Equipment.

FINANCIAL IMPACT: \$30,920.00

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff.

Memorandum

To: Honorable Mayor and Commissioners

From: Brett Kraley

Date: 10/12/10

Re: Budgeted Equipment Setup

The Equipment Division has solicited bids for the setup of recently purchased equipment. We are requesting permission to purchase 5 utility boxes and 1 snow plow. The utility boxes are being installed on Water and Sewer Department trucks and the plow is going on the Water Filtration truck.

The bids for the setup were solicited from Hoekstra Equipment of Grand Rapids, Arista Truck Systems of Grand Rapids, and Truck & Trailer of Dutton. Muskegon Brake bid on the snow plow only.

In accordance with established purchasing policy, we are requesting permission to purchase 5 utility boxes from Arista Truck Systems and one 8' poly snow plow from Hoekstra Equipment.

[illegible]

Date: October 12, 2010
To: Honorable Mayor and City Commissioners
From: Engineering
RE: Merit Network Inc. – METRO Act Permit

SUMMARY OF REQUEST:

Approve the attached permit for Merit Network to install aerial fiber optic facilities within the City's right of way and authorize the Mayor & Clerk to sign said permit.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve the permit and sign document

COMMITTEE RECOMMENDATION:

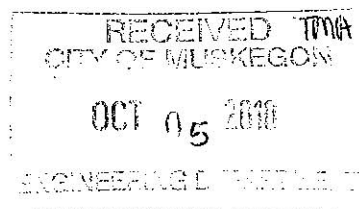


1000 Oakbrook Drive
Suite 200
Ann Arbor, MI 48104-6794

Phone: 734-527-5700
Fax: 734-527-5790
www.merit.edu

September 22, 2010

City of Muskegon
933 Terrace St.
Muskegon, MI 49440



Greetings!

Merit Network, Inc. is in the process of building fiber-optic infrastructure throughout the state of Michigan, and the path we hope to take runs through your municipality. We hope that you will grant us access to your municipality's rights-of-way by approving our application for a METRO Act Permit.

We have enclosed:

- Information about the METRO Permit process
- A check for the \$500 application fee
- Additional information about Merit Network and our Broadband Project, REACH-3MC

Merit Network, Inc. is a non-profit organization committed to providing Internet access – including Internet2 access – to the educational, governmental, health care, and research needs of the state of Michigan. As part of this effort, Merit has a sincere commitment to serving the educational, government, and not-for-profit communities via our statewide network.

I am on the road much of the time, so I'd like to invite you to contact our Grant Administrator, Ryan Kunzelman at kunzelr@merit.edu or 734-527-5739 if you need any assistance or additional information. For more information about Merit, please refer to the enclosed materials or visit our web site at www.merit.edu. Thank you for your support of Merit Network, Inc.

Sincerely,

A handwritten signature in black ink that appears to read "Robert Stovall".

Robert Stovall
VP, Network Operations and Engineering
Merit Network, Inc.

METRO Act Permit
Bilateral Form
Revised 12/06/02

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

TERMS AND CONDITIONS

1 Definitions

- 1.1 Company shall mean Merit Network Incorporated organized under the laws of the State of Michigan whose address is 1000 Oakbrook Drive, Suite 200, Ann Arbor, MI 48104.
- 1.2 Effective Date shall mean the date set forth in Part 13.
- 1.3 Manager shall mean Municipality's Clerk or his or her designee.
- 1.4 METRO Act shall mean the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.5 Municipality shall mean City of Muskegon, a Michigan municipal corporation.
- 1.6 Permit shall mean this document.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunication Facilities or Facilities shall mean the Company's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby grants a permit under the METRO Act to Company for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A on the terms set forth herein.
- 2.1.1 Exhibit A may be modified by written request by Company and approval by Manager.
- 2.1.2 Manager shall not unreasonably condition or deny any request for a modification of Exhibit A. Any decision of Manager on a request for a modification may be appealed by Company to Municipality's legislative body.
- 2.2 Overlapping. Company shall not allow the wires or any other facilities of a third party to be overlapped to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

- 3.1 Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Telecommunication Facilities are as follows:
- 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near Municipality) is Robert Duncan, 1000 Oakbrook, Suite 200, Ann Arbor, MI 48104. Ph# 734-527-5700. Email rduncan@merit.edu.
- 3.1.2 If Company's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____.

- 3.1.3 The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is Merit Network, Inc., Robert Duncan, 1000 Oakbrook, Suite 200, Ann Arbor, MI 48104. Ph# 734-527-5700. Email rduncan@merit.edu.

The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is Merit Network, Inc., Robert Duncan, 1000 Oakbrook, Suite 200, Ann Arbor, MI 48104. Ph# 734-527-5700. Email rduncan@merit.edu.

- 3.1.4 Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency. Phone number: 734-763-3448.

- 3.1.5 The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.

- 3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

- 3.3 As-Built Records. Company, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Company shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

- 4.1 No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Company, at its sole expense, shall modify the Telecommunication Facilities or take such other actions

burden, and Company shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Company over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Company's option, better) condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Company shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Company shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.
- 4.5 Tree Trimming. Company may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into

contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Company shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Company may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Company shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Company to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Company shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Company shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Company shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may

hereafter be amended. This section does not constitute a waiver of Company's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated Public Right-of-Way, Company shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards.
- 4.10 Relocation. If Municipality requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Company has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.
- 4.14 Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear

on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Company shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality shall notify Company promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Company, which consent shall not be unreasonably withheld. Company shall have the right to defend or settle, at its own expense, any claim against Municipality for which Company is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
- 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
- 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
- 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Company shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Company's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:
- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless Municipality notifies Company in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Company. Municipality shall not unreasonably deny a renewal term; or
- 7.1.2 When the Telecommunication Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Company or a successor of an assign of the Company; or
- 7.1.3 When Company, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Company or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Company has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

8.1 Municipal Requirement. Municipality may require Company to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Company shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Company's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of

its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

- 10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.
- 11 Assignment. Company may assign or transfer its rights under this Permit, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:
- 11.1 No such transfer or assignment or change in the control of Company shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.
- 11.2 After the completion of such construction, Company must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,
- 11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and
- 11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.
- 11.3 Company may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to 933 Terrace St., Muskegon, MI 49440

12.1.2 If to Company, to Merit Network, Inc., Robert Duncan, 1000 Oakbrook, Suite 200, Ann Arbor, MI 48104. Ph# 734-527-5700. Email rduncan@merit.edu.

12.2 Change of Address. Company and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Company to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Duties. Company shall faithfully perform all duties required by this Permit.

13.3 Effective Date. This Permit shall become effective when issued by Municipality and Company has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acceptance of the Permit.

13.4 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Company.

13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Company and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Muskegon

Attest:

By: _____
Clerk

Signature: _____
Print: _____
Title: _____
Date: _____

“Company accepts the Permit granted by Municipality upon the terms and conditions contained therein.”

Merit Network, Inc.

Signature: 

Print: Robert Stovall

Title: Vice President, Network Engineering &
Operations

Date: SEP 03 2010

METRO Act Permit Application Form
Revised 12/06/02

City of Muskegon
Name of Local Unit of Government

APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS
UNDER
METROPOLITAN EXTENSION TELECOMMUNICATIONS
RIGHTS-OF-WAY OVERSIGHT ACT
2002 PA 48
MCLA SECTIONS 484.3101 TO 484.3120

BY

Merit Network, Inc.
("APPLICANT")

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-241-6200 or via its web site at http://www.michigan.gov/mpsc/0,1607,7-159-16372_22707---,00.html.

45 Days to Act—Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3). The Michigan Public Service Commission can impose fines of up to \$40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

-- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at 933 Terrace St., Muskegon, MI 49440.

City of Muskegon
Name of local unit of government

APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS

By
Merit Network, Inc
("APPLICANT")

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3).

This application must be accompanied by a one-time application fee of \$500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCLA 484.3105(3).

1 GENERAL INFORMATION:

1.1 Date: July, 2010

1.2 Applicant's legal name: Merit Network, Inc
Mailing Address: 1000 Oakbrook Drive, Suite 200
Ann Arbor, MI 48104-6794
Telephone Number: 734-527-5700
Fax Number: 734-527-5790
Corporate website: http://www.merit.edu/

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Robert (Bob) Stovall, Vice President, Network Operation & Engineering

Mailing Address: Same as above

Telephone Number: 734-476-2288

Fax Number: Same as above

E-mail Address: bes@merit.edu

1.3 Type of Entity: (Check one of the following)

- ☐ Corporation
☐ General Partnership
☐ Limited Partnership
☐ Limited Liability Company
☐ Individual
☒ Other, please describe: private non-profit 501(c)(3) corporation

1.4 Assumed name for doing business, if any: Merit Network, Inc.

1.5 Description of Entity:

- 1.5.1 Jurisdiction of incorporation/formation; Michigan
1.5.2 Date of incorporation/formation; October 17, 1966
1.5.3 If a subsidiary, name of ultimate parent company; N/A
1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).
Chairman, David Gift, Michigan State University
President: Donald J. Welch
Secretary: Brenda Helminen, Michigan Technology University
Treasurer: James Gilchrist, Western Michigan University

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Consumer and Industry Services and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information. **State ID: 38-2210903**

Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: **No**

1.7 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle: Yes ☒ No

If "yes," please describe the circumstances.

1.8 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.8.1 A felony; or

Circle: Yes ☒ No

If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

1.9 If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain. **Not Applicable, Merit Network is a non-profit corporation governed by Michigan's public universities.**

1.9.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

Merit Network, Inc. is privately held. Latest financial statement is attached. See Exhibit A.

2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

No authorizations are applicable. Merit Network is only offering data services for schools, government organizations, health care organizations, businesses, and households.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

A fiber optic network working to improve broadband in the State of Michigan.

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).

See Exhibit B

See Exhibit B

2.4 Please provide an anticipated or actual construction schedule.

The project is scheduled for completion by December 2012

2.5 Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

Merit Network, Inc., LYNX Network Group, LLC, KEPS Technologies, Inc. (ACD.net)

2.6 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

Merit Network, Inc.

See Exhibit C for Emergency call out list.

Construction will primarily aerial on existing power poles. Merit Network, Inc. will provide copies of joint use agreements upon request.

3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

Please provide the following or attach an appropriate exhibit.

3.1 Address of Applicant's nearest local office;

Merit Network, Inc.

1000 Oakbrook

Suite 200

Ann Arbor, MI 48104-6794

3.2 Location of all records and engineering drawings, if not at local office;

Local office will have a copy of all records and engineering drawings.

3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system;

see local contact information above

3.4.1 Worker's compensation;
See Exhibit E, a letter from the University of Michigan Risk Management Services office regarding Merit's converge under the University of Michigan.

3.4.2 Commercial general liability, including at least:

3.4.2.1 Combined overall limits;

3.4.2.2 Combined single limit for each occurrence of bodily injury;

3.4.2.3 Personal injury;

3.4.2.4 Property damage;

3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations;

3.4.2.6 Independent contractor liability;

3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);

3.4.2.8 Environmental contamination;

3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents.

Merit Network is covered by the University of Michigan's policy for automobile coverage. No non-UM vehicles will be used.

3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

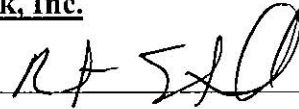
Contractors to be determined.

4 **CERTIFICATION:**

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

Merit Network, Inc.

Signature: _____



Print: Robert Stovall

Title: Vice President,
Network Engineering & Operations

Date: SEP 03 2010

::ODMA\PCDOCS\GRR\759295\5

Merit Network, Inc.

Financial Report
June 30, 2009

Merit Network, Inc.

Contents

Report Letter	I
----------------------	----------

Financial Statements

Balance Sheet	2
---------------	---

Statement of Activities and Changes in Net Assets	3
---	---

Statement of Functional Expenses	4
----------------------------------	---

Statement of Cash Flows	5
-------------------------	---

Notes to Financial Statements	6-11
-------------------------------	------



Plante & Moran, PLLC
Suite 300
750 Trade Centre Way
Portage, MI 49002
Tel: 269.567.4500
Fax: 269.567.4501
planteandmoran.com

Independent Auditor's Report

To the Board of Directors
Merit Network, Inc.

We have audited the accompanying balance sheet of Merit Network, Inc. (the "Organization") as of June 30, 2009 and 2008 and the related statements of activities and changes in net assets, functional expenses, and cash flows for the years then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Merit Network, Inc. at June 30, 2009 and 2008 and the changes in its net assets and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Plante & Moran, PLLC

November 16, 2009

Merit Network, Inc.

Balance Sheet

	<u>June 30, 2009</u>	<u>June 30, 2008</u>
Assets		
Cash and cash equivalents	\$ 5,239,445	\$ 5,305,736
Accounts receivable (Note 2)	713,361	562,165
Prepaid expenses and other:		
Prepaid expenses	332,989	400,745
Bond financing fees - Net of amortization of \$50,605 in 2009 and \$40,484 in 2008	101,203	111,324
Property and equipment - Net (Note 3)	8,886,916	8,219,532
Software licenses - Net	467,294	-
Total assets	\$ 15,741,208	\$ 14,599,502
Liabilities and Net Assets		
Liabilities		
Accounts payable	\$ 420,525	\$ 378,048
Accrued liabilities and other:		
Accrued wages and other liabilities	517,226	480,640
Deferred revenue	1,051,148	824,467
Debt (Note 4)	3,797,933	4,524,551
Total liabilities	5,786,832	6,207,706
Net Assets		
Unrestricted	9,954,376	8,391,453
Temporarily restricted net assets	-	343
Total net assets	9,954,376	8,391,796
Total liabilities and net assets	\$ 15,741,208	\$ 14,599,502

Merit Network, Inc.

Statement of Activities and Changes in Net Assets

	Year Ended					
	June 30, 2009		June 30, 2008			
	Unrestricted	Temporarily Restricted	Total	Unrestricted	Temporarily Restricted	Total
Revenue and Support						
Grant revenue	\$ 616,946	\$ -	\$ 616,946	\$ 140,359	\$ -	\$ 140,359
Membership fees	6,348,520	-	6,348,520	6,348,519	-	6,348,519
MichNet affiliate and service fees	6,618,567	-	6,618,567	6,266,162	-	6,266,162
Global routing and operations	607,647	-	607,647	455,885	-	455,885
NANOG fees	881,052	-	881,052	972,798	-	972,798
Other service revenue	997,429	-	997,429	757,625	-	757,625
Merit email services	489,550	-	489,550	-	-	-
Interest income	82,153	-	82,153	293,949	13,662	307,611
Miscellaneous income	650	-	650	-	-	-
Total revenue and support	16,642,514	-	16,642,514	15,235,297	13,662	15,248,959
Net Assets Released from Restrictions	343	(343)	-	161,807	(161,807)	-
Total revenue, support, and net assets released from restrictions	16,642,857	(343)	16,642,514	15,397,104	(148,145)	15,248,959
Expenses						
Program services	13,045,902	-	13,045,902	12,142,196	-	12,142,196
Management and general	2,034,032	-	2,034,032	1,696,537	-	1,696,537
Total expenses	15,079,934	-	15,079,934	13,838,733	-	13,838,733
Increase (Decrease) in Net Assets	1,562,923	(343)	1,562,580	1,558,371	(148,145)	1,410,226
Net Assets - Beginning of year	8,391,453	343	8,391,796	6,833,082	148,488	6,981,570
Net Assets - End of year	\$ 9,954,376	\$ -	\$ 9,954,376	\$ 8,391,453	\$ 343	\$ 8,391,796

See Notes to Financial Statements.

Merit Network, Inc.

Statement of Functional Expenses

Year Ended June 30, 2009			
	Program Services	Management and General	Total
Salaries, wages, and fringe benefits	\$ 5,530,737	\$ 592,560	\$ 6,123,297
Data circuits	4,323,776	-	4,323,776
Office phones	33,729	3,336	37,065
Materials and services	528,356	16,341	544,697
Travel and professional development	192,137	-	192,137
Host agreement fees	-	75,432	75,432
Other expenses	1,149,482	10,883	1,160,365
Rental expense	-	856,755	856,755
Interest expense	-	155,788	155,788
Amortization of bond fees	-	10,121	10,121
Depreciation and amortization	1,287,685	311,803	1,599,488
Bad debt	-	1,013	1,013
Total functional expenses	<u>\$ 13,045,902</u>	<u>\$ 2,034,032</u>	<u>\$ 15,079,934</u>

Year Ended June 30, 2008			
	Program Services	Management and General	Total
Salaries, wages, and fringe benefits	\$ 4,710,087	\$ 486,190	\$ 5,196,277
Data circuits	4,511,947	-	4,511,947
Office phones	37,433	3,864	41,297
NOC	482,127	-	482,127
Materials and services	582,482	18,015	600,497
Travel and professional development	207,710	-	207,710
Host agreement fees	-	74,390	74,390
Other expenses	487,467	9,948	497,415
Rental expense	-	688,007	688,007
Interest expense	-	184,866	184,866
Amortization of bond fees	-	10,121	10,121
Depreciation and amortization	1,122,943	221,136	1,344,079
Total functional expenses	<u>\$ 12,142,196</u>	<u>\$ 1,696,537</u>	<u>\$ 13,838,733</u>

Merit Network, Inc.

Statement of Cash Flows

	Year Ended	
	June 30, 2009	June 30, 2008
Cash Flows from Operating Activities		
Increase in net assets	\$ 1,562,580	\$ 1,410,226
Adjustments to reconcile increase in net assets to net cash from operating activities:		
Depreciation	1,477,677	1,344,079
Amortization of intangible assets	121,811	-
Amortization of debt costs	10,121	10,121
Changes in operating assets and liabilities that provided (used) cash:		
Accounts receivable	(151,196)	(133,850)
Prepaid expenses	67,756	(194,148)
Accounts payable	42,477	(313,752)
Accrued wages and other liabilities	36,586	100,177
Deferred revenue	226,681	(29,839)
Net cash provided by operating activities	3,394,493	2,193,014
Cash Flows from Investing Activities		
Purchase of property and equipment	(2,113,393)	(2,672,861)
Purchases of software licenses	(589,105)	-
Net cash used in investing activities	(2,702,498)	(2,672,861)
Cash Flows from Financing Activities		
Proceeds from debt	722,551	-
Payments on debt	(1,480,837)	(2,035,701)
Net cash used in financing activities	(758,286)	(2,035,701)
Net Decrease in Cash and Cash Equivalents	(66,291)	(2,515,548)
Cash and Cash Equivalents - Beginning of year	5,305,736	7,821,284
Cash and Cash Equivalents - End of year	<u>\$ 5,239,445</u>	<u>\$ 5,305,736</u>
Supplemental Disclosure of Cash Flow Information - Cash paid for interest	<u>\$ 155,788</u>	<u>\$ 184,866</u>

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 1 - Nature of Business and Significant Accounting Policies

Nature of Organization - Merit Network, Inc. (the "Organization") is a not-for-profit organization serving more than one million people within Michigan. The Organization's mission is to develop and promote advanced Internet services for research and education. The Organization's network connects universities, community colleges, K-12 schools, libraries, state agencies, and cultural organizations.

Method of Accounting and Basis of Presentation - The accompanying financial statements of the Organization have been prepared on the accrual basis of accounting. The Organization's significant accounting policies are presented below.

Revenue Recognition - Merit Network, Inc.'s main source of funding comes from the membership fees of the 12 governing member universities as well as service fees from other member organizations. Governing members include Central Michigan University, Eastern Michigan University, Ferris State University, Grand Valley State University, Lake Superior State University, Michigan State University, Michigan Tech, Northern Michigan University, Oakland University, University of Michigan, Wayne State University, and Western Michigan University. Merit Network, Inc. reports this funding as unrestricted support.

Merit Network, Inc. also receives grants related to certain projects. These grants are exchange-type grants, therefore revenue is recognized as services are provided.

Deferred revenue represents unused portions of Internet service agreements, which will be recognized in subsequent years as services are rendered.

Equipment - Purchased equipment is stated at cost. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets. The assets of the Organization are estimated to have useful lives of 3, 6, and 20 years.

Intangible Assets - Intangible assets consist of \$589,105 software licenses. These costs are being amortized on a straight-line basis over the term of the licenses. Amortization expense and accumulated amortization was \$121,811 for 2009.

Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures in the financial statements. Actual results could differ from these estimates.

Hosting Agreement with University of Michigan - Merit Network, Inc. has a hosting agreement with the University of Michigan (the "University"), in which the University will provide general and administrative services such as billing, collections, accounts payable, and payroll services to the Organization for an annual fee. As part of this agreement, the University will assign employees and provide facilities and other support to the Organization as necessary to perform operating activities.

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 1 - Nature of Business and Significant Accounting Policies (Continued)

Employees are covered under the University's retirement plan and Merit Network, Inc. is charged 10 percent of the employees' annual salary to fund the plan. If the hosting agreement were to terminate, the University would negotiate in good faith a settlement covering net retirement costs. The settlement would determine a schedule of payments to cover the anticipated future costs of retirement benefits that the University will pay to staff who retire from University employment while working at Merit Network, Inc. At June 30, 2009, there are no plans to terminate the agreement and it is not feasible to estimate what the future retirement costs would be.

Cash Equivalents - Merit Network, Inc.'s cash is held at the University and is commingled with other University cash. The Organization has unlimited access to this cash and, therefore, considers the balance as cash and cash equivalents.

Accounts Receivable - The Organization's accounts receivable are stated at the net invoice amount. Management reviews accounts receivable balances greater than 90 days from invoice date and, based on an assessment of current creditworthiness, estimates the portion, if any, of the balance that will not be collected as well as a general valuation allowance for those accounts based on historical experience. All accounts or portions thereof deemed to be uncollectible are written off to the allowance for bad debts.

Tax Status - Merit Network, Inc. is a nonprofit tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is exempt from income taxes.

Functional Allocation of Expenses - The cost of providing the various programs and other activities has been summarized on a functional basis in the statement of activities and changes in net assets. Accordingly, certain costs have been allocated among the programs and support services benefited. The basis used is considered appropriate; however, other methods could be used that would produce different results.

Net Assets - For financial statement purposes, the Organization distinguishes between unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. The Organization reports net assets that are not subject to imposed stipulations as unrestricted net assets. Net assets subject to stipulations that may or will be met by actions of the Organization and/or the passage of time are recorded as temporarily restricted net assets. Temporarily restricted net assets at June 30, 2009 was zero. Temporarily restricted net assets at June 30, 2008 totaled \$343, that was restricted for the purchase of fiber optic lines.

Subsequent Events - The financial statements and related disclosures include evaluation of events up through and including November 16, 2009, which is the date the financial statements were available to be issued.

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 1 - Nature of Business and Significant Accounting Policies (Continued)

Reclassification - Certain reclassifications were made to amounts in the 2008 financial statements conform to the classifications used in 2009. The reclassifications did not impact the overall change in net assets for 2008.

Note 2 - Accounts Receivable

The details of accounts receivable are as follows:

	2009	2008
Accounts receivable	\$ 550,650	\$ 560,429
Due from member organizations	162,711	5,911
Less allowance for doubtful accounts	-	(4,175)
Total	<u>\$ 713,361</u>	<u>\$ 562,165</u>

Note 3 - Property and Equipment

The cost of property and equipment is summarized as follows:

	2009	2008
Office equipment	\$ 1,263,420	\$ 1,104,329
Capital lease equipment	1,924,814	1,893,146
Field equipment	5,850,571	8,675,524
Field equipment - Fiber optic lines	6,037,692	5,214,345
Leasehold improvement	735,365	735,365
Total cost	15,811,862	17,622,709
Accumulated depreciation	<u>(6,924,946)</u>	<u>(9,403,177)</u>
Net carrying amount	<u>\$ 8,886,916</u>	<u>\$ 8,219,532</u>

Depreciation for capital lease equipment was \$375,785 for 2009 and \$373,610 for 2008. Total depreciation expense was \$1,477,677 for 2009 and \$1,344,079 for 2008.

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 4 - Debt

The following is a summary of debt at June 30:

	2009	2008
Note payable to Michigan Information Technology Center (MITC), a related party, in annual installments of \$82,000 through 2010. There is no interest on this note	\$ 64,746	\$ 239,167
Capital lease at 3.336 percent with Cisco Systems, due in annual installments ranging from \$90,224 to \$183,547, including interest, through 2011. The note is collateralized by the equipment	171,800	343,863
Michigan Strategic Fund Limited Obligation Revenue Bonds Series 2005 in the amount of \$4,204,000, which have an original maturity date of March 1, 2012. The bonds bear interest at 3.87 percent annually. Annual principal payments began in 2007, ranging from \$533,474 to \$926,120, and are due on the first day of each month. The bonds are collateralized by all equipment and assets of the Organization	2,412,305	3,227,871
Capital lease at 2.035 percent with Steelcase Financial Services, Inc., due in monthly installments of \$8,135, including interest, through 2010. The note is collateralized by the equipment	47,672	137,391
Note payable at 6.86 percent with United Bank & Trust - Washtenaw, due in monthly installments of \$8,719, including interest, through 2013. The note is collateralized by the equipment	336,027	414,646
Note payable at 6.95 percent with United Bank & Trust - Washtenaw, due in monthly installments of \$6,962, including interest, through 2010. The note is collateralized by the equipment	86,947	161,613
Capital lease at 8.15 percent with Key Group, due in monthly installments of \$1,074, including interest, through 2012. The note is collateralized by the equipment	31,018	-

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 4 - Debt (Continued)

	<u>2009</u>	<u>2008</u>
Note payable at 1.5 percent over prime rate (5.00 percent at June 30, 2009) with United Bank & Trust - Washtenaw in the amount of \$722,551, due in monthly installments of \$21,674, including interest, through 2012. The note is collateralized by the equipment	\$ 647,418	\$ -
Total	<u>\$ 3,797,933</u>	<u>\$ 4,524,551</u>

The debt service requirements of the long-term debt based on the terms of the bonds and notes payable for the succeeding years are as follows:

<u>Years Ending June 30</u>	<u>Principal</u>	<u>Interest</u>
2010	\$ 1,595,690	\$ 133,295
2011	1,327,372	73,533
2012	809,701	19,289
2013	65,170	1,629
Total	<u>\$ 3,797,933</u>	<u>\$ 227,746</u>

Note 5 - Related Party Transactions

The Organization receives revenue and purchases services from various organizations that are members of the board of directors. Following is a summary of transactions and balances with member organizations:

	<u>2009</u>	<u>2008</u>
Revenue from member organizations	\$ 7,659,216	\$ 6,652,444
Due from member organizations (included in accounts receivable)	162,711	7,163
Services purchased from member organizations	702,166	1,122,765

In addition to transactions with member organizations, Merit Network, Inc. has a note payable of \$57,912 and \$232,333 due to MITC, a related party, as of June 30, 2009 and 2008, respectively.

Merit Network, Inc. also has a rental agreement for office space with MITC. Rental payments made to MITC totaled \$825,011 and \$702,434 for the years ended June 30, 2009 and 2008, respectively.

Merit Network, Inc.

Notes to Financial Statements June 30, 2009 and 2008

Note 5 - Related Party Transactions (Continued)

Future rental obligations related to this agreement are as follows:

2010	\$ 617,834
2011	636,369
2012	636,369
2013	636,369
2014	655,460
2015-2019	3,336,293
2020 and thereafter	<u>1,043,067</u>
Total	<u>\$ 7,561,761</u>

Note 6 - Operating Leases

The Organization leases various circuits and telecommunication lines under operating leases that include provisions for ongoing maintenance expiring at various dates through June 2030. The following is a schedule of future minimum rental payments for the years ending June 30:

2010	\$ 1,878,853
2011	1,367,824
2012	717,292
2013	586,643
2014	409,826
2015 and thereafter	<u>5,185,503</u>
Total	<u>\$ 10,145,941</u>

Total rent expense on these leases for 2009 and 2008 was \$2,179,644 and \$2,902,130, respectively.

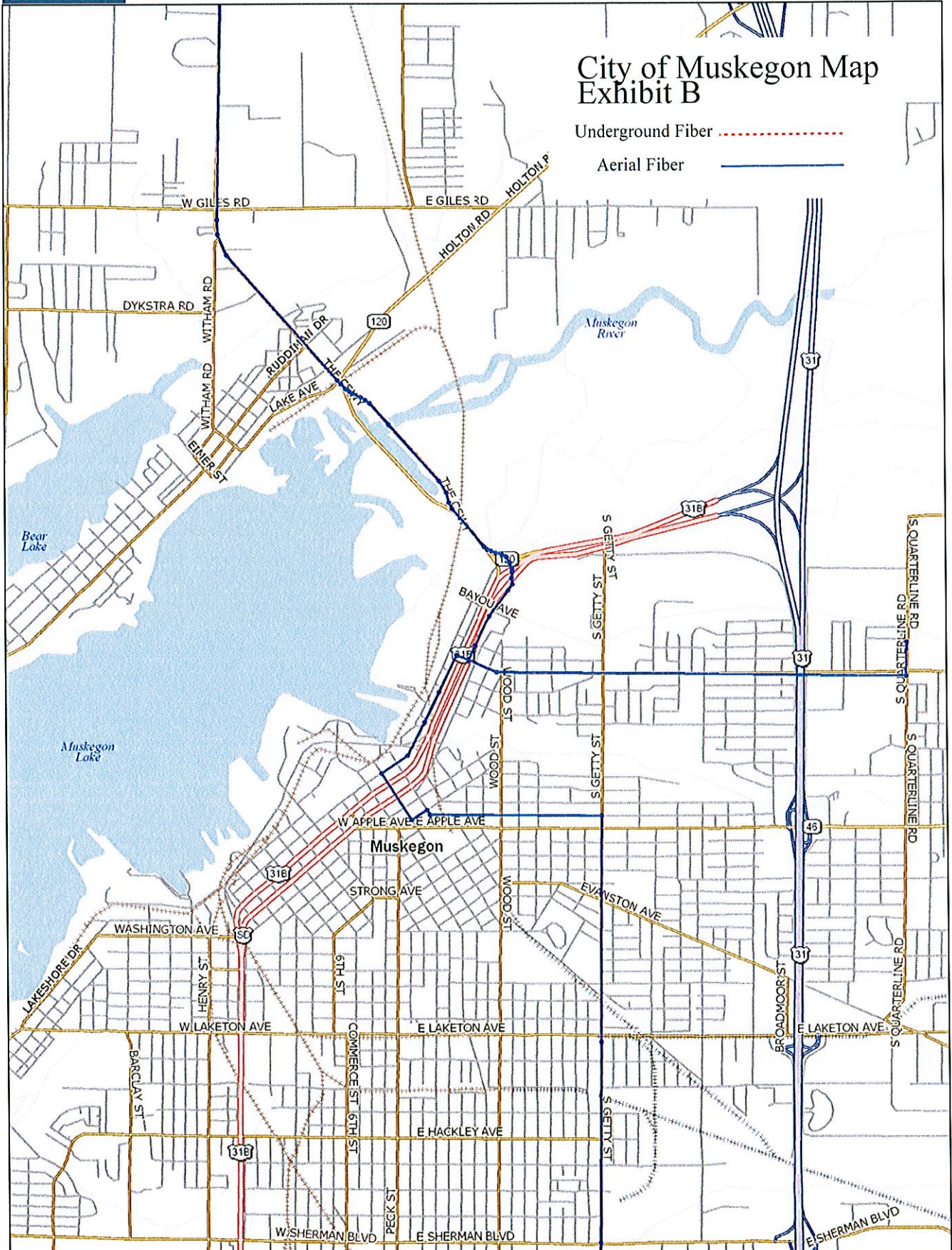
Note 7 - Cash Flows

During the year ended June 30, 2009, Merit Network, Inc. entered into a capital lease resulting in a noncash transaction in the amount of \$31,668.

City of Muskegon Map Exhibit B

Underground Fiber (red dashed line)

Aerial Fiber (blue solid line)



Data use subject to license.

© DeLorme, DeLorme Street Atlas USA® 2010.

www.delorme.com



Exhibit C
Merit Network, Inc.
1000 Oakbrook Dr.
Ann Arbor, MI 48104

Bob Stovall

Title: Vice President, Network Operations and Engineering

Role: Oversee the issuance of permits and an overall overseer of the Project(s).

Email Address: bes@merit.edu

Phone Number: 734-476-2288

Pete Empie

Title: Project Manager

Role: On the road working directly with Turnkey, the construction company, and the pole utilities overseeing the work done on the ground. Will be reviewing and submitting permits as well.

Email Address: ictpete@aol.com or pempie@merit.edu

Phone Number: 517-420-1600

Robert Duncan

Title: Network Engineering Director

Role: Pole engineering and planning on overall infrastructure.

Email Address: rduncan@merit.edu

Phone Number: 734-527-5700

Glenn Wiltse

Title: DNS and IP Registration Administration

Role: Assist in developing maps and general consultation.

Email Address: iggy@merit.edu

Phone Number: 734-527-5700

Ryan Kunzelman

Title: Grant Compliance Manager

Role: General oversight of compliance as well as a liaison for flow of information throughout the company concerning the REACH-3MC and REACH-3MC II. Will be reviewing and submitting permits as well.

Email Address: kunzelr@merit.edu

Phone Number: 734-527-5739

Karen Smith

Title: Vice President, Finance & Administration/CFO

Email Address: ksmith@merit.edu

Phone Number: 734-527-5700

Don Welch

Title: President and CEO

Email Address: djwelch@merit.edu

Phone Number: 734-527-5700

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/1/2010

PRODUCER

Aon Private Risk Management - Detroit
3000 Town Center, Suite 3000
Southfield MI 48075

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Merit Network, Inc.

1000 Oakbrook Drive
Ann Arbor MI 48104

INSURERS AFFORDING COVERAGE**NAIC #**

INSURER A: Travelers Property Casualty Co

25674

INSURER B: Travelers Indemnity Company of

25682

INSURER C: Travelers Property Casualty Co

25674

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	TT02100371	12/1/2009	12/1/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	BA0557P42609TEC	12/1/2009	12/1/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☒ RETENTION \$ 10,000	TT05802955	12/1/2009	12/1/2010	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU-TORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate Holder, per attached contract, is an additional insured under the above general liability policy with respect to liability arising out of work performed.

Description: The REACH Michigan Mile Collaborative (REACH-3MC) is a partnership led by Merit-Michigan's education network - which engages Merit with 4 commercial providers to share a 1017

CERTIFICATE HOLDER

Per attached contract

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Aon Private Risk Management
Insurance Agency, Inc.

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTION OF OPERATIONS SECTION CONTINUED

DATE
7/1/2010

CERTIFICATE HOLDER:

Per attached contract

INSURED:

Merit Network, Inc.

1000 Oakbrook Drive
Ann Arbor MI 48104

DESCRIPTION OF OPERATIONS CONTINUED:

mile extension of Merit's advanced fiber optic network to serve anchor institutions, households and businesses. REACH-3MC is an ARRA funded project that is designed to improve broadband infrastructure throughout the state.

Note per conditions of GL policy: Certificate Holder is added as an Additional Insured excluding Workers' Compensation and Employers' Liability as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions. Cancellation Provision shown herein is subject to shorter or longer time periods depending on the jurisdiction of, and reason for, the cancellation.

City of Monroe
120 E. First St.
Monroe, MI 48161

Monroe Charter Township
4925 E. Dunbar Rd.
Monroe, MI 48161

Raisinville Township
96 Ida-Maybee Rd.
Monroe, MI 48161

Dundee Township
179 Main St.
Dundee, MI 48131

Village of Dundee
350 W. Monroe St.
Dundee, MI 48131

Summerfield Township
PO Box 98
Petersburg, MI 49270

City of Petersburg
24 E. Center St.
Petersburg, MI 49270

Deerfield Township
468 Carey St.
Deerfield, MI 49238

Village of Deerfield
101 W. River St.
Deerfield, MI 49238

Blissfield Township
PO Box 58
Blissfield, MI 49228

Village of Blissfield
408 E. Adrian St.
Blissfield, MI 49228

Palmyra Township
PO Box 97
Palmyra, MI 49268

Madison Charter Township
4008 S. Adrian Hwy
Adrian, MI 49221

City of Adrian
135 E. Maumee St. 2nd Floor
Adrian, MI 49221

Dover Township
7712 W. Carleton Rd.
Clayton, MI 49235

Hudson Township
1221 Kiel Hwy
Hudson, MI 49247

City of Hudson
121 N. Church St.
Hudson, MI 49247

Pittsford Township
12011 Hudson Rd.
Pittsford, MI 49271

Jefferson Township
2837 Bird Lake Rd. S
Osseo, MI 49266

Cambria Township
7287 Cambria Rd.
Hillsdale, MI 49242

Hillsdale Township
PO Box 181
Hillsdale, MI 49242

City of Hillsdale
97 North Broad St.
Hillsdale, MI 49242

Fayette Township
211 North St.
Jonesville, MI 49250

Village of Jonesville
265 E. Chicago St.
Jonesville, MI 49250

Allen Township
8181 Arkansaw Rd.
Allen, MI 49227

Village of Allen
7800 Arkansaw Rd.
Allen, MI 49227

Quincy Township
884 Dery St.
Quincy, MI 49082

Village of Quincy
47 Cole St.
Quincy, MI 49082

Coldwater Township
319 Sprague Rd.
Coldwater, MI 49036

City of Coldwater
One Grand St.
Coldwater, MI 49036

Batavia Township
402 N. Snow Prairie Rd.
Coldwater, MI 49036

Bethel Township
453 Hatmaker Rd.
Bronson, MI 49028

Bronson Township
766 Kosmerick Rd.
Bronson, MI 49028

City of Bronson
141 S. Matteson St.
Bronson, MI 49028

Burr Oak Township
PO Box 241
Burr Oak, MI 49030

Fawn River Township
71209 S. Lakeview St.
Sturgis, MI 49091

City of Sturgis
130 N. Nottawa
Sturgis, MI 49091

Sherman Township
63108 W. Fish Lake Rd.
Sturgis, MI 49091

Colon Township
PO Box 608
Colon, MI 49040

Nottawa Township
PO Box 68
Centreville, MI 49072

Village of Centreville
221 W. Main St
Centreville, MI 49032

Lockport Township
56270 Buffalo Dr.
Three Rivers, MI 49093

City of Three Rivers
333 W. Michigan Ave.
Three Rivers, MI 49093

Fabious Township
PO Box 455
Three Rivers, MI 49093

Newberg Township
59950 County Line Rd.
Three Rivers, MI 49093

Penn Township
61273 Alexander Dr.
Vandalia, MI 49095

Vandalia Village
18035 W. State St.
Vandalia, MI 49095

Cassopolis Village
117 S. Broadway St. Suite 100
Cassopolis, MI 49031

LaGrange Township
24745 Cass St.
Cassopolis, MI 49031

City of Dowagiac
241 S. Front St.
Dowagiac, MI 49047

Silver Creek Township
PO Box 464
Dowagiac, MI 49047

Pokagon Township
30683 Peavine St.
Dowagiac, MI 49047

Berrien Township

PO Box 61
Berrien Center, MI 49102

Pipestone Township

PO Box 291
Eau Claire, MI 49111

Village of Eau Claire

6625 E. Main St.
Eau Claire, MI 49111

Oronoko Charter Township

4583 E. Snow Rd.
Berrien Springs, MI 49103

Village of Berrien Springs

PO Box 177
Berrien Springs, MI 49103

Royalton Township

980 Miners Rd.
St. Joseph, MI 49085

City of Benton Harbor

200 Wall St.
Benton Harbor, MI 49022

Benton Charter Township

1725 Territorial Rd.
Benton Harbor, MI 49022

Hagar Township

PO Box 135
Riverside, MI 49084

Coloma Charter Township

4919 Paw Paw Lake Rd.
Coloma, MI 49038

City of Coloma

119 N. Paw Paw St.
Coloma, MI 49038

Covert Township

PO Box 35
Covert, MI 49043

South Haven Charter Township

09761 Blue Star Memorial Hwy
South Haven, MI 49090

City of South Haven

539 Phoenix St.
South Haven, MI 49090

Casco Township

7104 107th Ave.
South Haven, MI 49090

Ganges Township

1904 64th St.
Fennville, MI 49408

Saugatuck Township

3461 Blue Star Memorial Hwy.
Saugatuck, MI 49453

Clyde Township

PO Box 671
Fennville, MI 49408

City of Fennville

222 S. Maple St.
Fennville, MI 49408

Manlius Township

3134 57th St.
Fennville, MI 49408

Fillmore Township

4219 52nd St.
Holland, MI 49423

Overisel Township

A-4307 144th Ave.
Holland, MI 49423

Zeeland Charter Township

6582 Byron Rd.
Zeeland, MI 49464

City of Zeeland

21 S. Elm St.
Zeeland, MI 49464

Holland Charter Township

PO Box 8127
Holland, MI 49422

Olive Township

6480 136th Ave.
Holland, MI 49424

Robinson Township

12010 120th Ave.

Grand Haven, MI 49417

Grand Haven Charter Township

13300 168th Ave.

Grand Haven, MI 49417

City of Grand Haven

519 Washington Ave.

Grand Haven, MI 49417

City of Ferrysburg

408 Fifth St.

Ferrysburg, MI 49409

Spring Lake Township

106 S. Buchanan St.

Spring Lake, MI 49456

City of Norton Shores

4814 Henry St.

Norton Shores, MI 49441

Muskegon Charter Township

1990 E. Apple Ave.

Muskegon, MI 49442

City of Muskegon

933 Terrace St.

Muskegon, MI 49440

Dalton Township

1616 E. Riley Thompson Rd.

Muskegon, MI 49445

Fruitland Township

4545 Nestrom Rd.

Whitehall, MI 49461

Whitehall Township

7644 Durham Rd.

Whitehall, MI 49461

City of Whitehall

405 E. Colby St.

Whitehall, MI 49461

City of Montague

8778 Ferry St.

Montague, MI 49437

Montague Township

3125 Weesies Rd.

Montague, MI 49437

Grant Township

7140 S. Oceana Dr.

Rothbury, MI 49452

Shelby Township

PO Box 215

Shelby, MI 49455

Benona Township

7169 W. Baker Rd.

Shelby, MI 49455

Hart Township

3437 W. Polk Rd.

Hart, MI 49420

Weare Township

6295 N. 88th Ave.

Hart, MI 49420

Pentwater Township

PO Box 512

Pentwater, MI 49449

City of Pentwater

327 S. Hancock St.

Pentwater, MI 49449

Summit Township

4560 W. Anthony Rd.

Ludington, MI 49431

Pere Marquette Charter Township

1699 S. Pere Marquette Hwy

Ludington, MI 49431

City of Ludginton

400 S. Harrison St.

Ludington, MI 49431

Amber Township

221 N. Gordon Rd.

Scottville, MI 49454

City of Scottville

105 North Main St.

Scottville, MI 49454

Custer Township
2888 E. Wilson Rd.
Custer, MI 49405

Branch Township
PO Box 304
Walhalla, MI 49548

Victory Township
4118 N. Victory Corner Rd.
Ludington, MI 49431

Sherman Township
PO Box 67
Fountain, MI 49410

Grant Township
8969 N. US Hwy 31
Free Soil, MI 49411

Free Soil Township
497 E. Free Soil Rd.
Free Soil, MI 49411

Sweetwater Township
7438 W. Wingleton Rd.
Baldwin, MI 49304

Webber Township
PO Box 939
Baldwin, MI 49304

Peacock Township
4480 W. 4 Mile Rd.
Irons, MI 49644

Newkrick Township
520 N. Kings Hwy
Luther, MI 49646

Ellsworth Township
PO Box 113
Luther, MI 49656

Village of Luther
PO Box 9
Luther, MI 49646

Filer Charter Township
2505 Filer City Rd.
Manistee, MI 49660

City of Manistee
70 Maple St.
Manistee, MI 49660

Manistee Township
410 Holden St.
Manistee, MI 49660

Brown Township
9763 Coates Hwy
Manistee, MI 49660

Bear Lake Township
8644 Maidens Rd.
Bear Lake, MI 49614

Village of Bear Lake
PO Box 175
Bear Lake, MI 49614

Pleasanton Township
8958 Lumley Rd.
Bear Lake, MI 49614

Joyfield Township
6393 Joyfield Rd.
Frankfort, MI 49635

Benzonia Township
PO Box 224
Benzonia, MI 49616

Village of Benzonia
PO Box 223
Benzonia, MI 49616

Village of Beulah
7228 Commercial St.
Beulah, MI 49617

Homestead Township
PO Box 315
Honor, MI 49640

Village of Honor
10922 Platte St.
Honor, MI 49640

Inland Township
19668 Honor Hwy
Interlochen, MI 49643

Green Lake Township
PO Box 157
Interlochen, MI 49634

Blair Township
2121 Co. Rd. 633
Grawn, MI 49637

Garfield Township
3848 Veterans Dr.
Traverse city, MI 49684

City of Traverse City
400 Boardman Ave.
Govermental Center, 1st Floor
Traverse City, MI 49684

East Bay Township
1965 3 Mile Rd. N
Traverse City, MI 49686

Acme Township
6042 Acme Rd.
Williamsburg, MI 49690

Whitewater Township
PO Box 159
Williamsburg, MI 49690

Clearwater Township
PO Box 1
Rapid City, MI 49676

Kalkaska Township
PO Box 855
Kalkaska, MI 49646

Village of Kalkaska
200 Hyde St.
Kalkaska, MI 49646

Rapid River Township
1010 Phelps Rd.
Kalkaska, MI 49646

Custer Township
PO Box 814
Mancelona, MI 49659

Mancelona Township
PO Box 332
Mancelona, MI 49659

Village of Mancelona
PO Box 648
Mancelona, MI 49659

Chestonia Township
PO Box 295
Alba, MI 49611

Jordan Township
5577 St. Johns Rd.
East Jordan, MI 49727

Echo Township
2876 Finkton Rd.
East Jordan, MI 49727

South Arm Township
Po Box 304
East Jordan, MI 49727

City of East Jordan
201 Main St.
East Jordan, MI 49727

Eveline Township
PO Box 454
Charlevoix, MI 49720

Marion Township
01362 Matchett Rd.
Charlevoix, MI 49720

City of Charlevoix
210 State St.
Charlevoix, MI 49720

Boyne City
319 North Lake St.
Boyne City, MI 49712

Evangeline Township
PO Box 396
Boyne City, MI 49712

Bay Township
05045 Boyne City Rd.
Boyne City, MI 49712

Hayes Township
9195 Old 31 N
Charlevoix, MI 49720

Melrose Township
PO Box 189
Walloon Lake, MI 49796

Bear Creek Township
373 N. Division
Petoskey, MI 49770

City of Petoskey
101 E. Lake St.
Petoskey, MI 49770

Little Traverse Township
8288 S. Pleasantview Rd.
Harbor Springs, MI 49740

Littlefield Township
PO Box 188
Alanson, MI 49706

Village of Alanson
PO Box 425
Alanson, MI 49706

Maple River Township
3989 US Hwy 31
Brutus, MI 49716

McKinley Township
PO Box 262
Pellston, MI 49769

Village of Pellston
125 Milton Rd.
Pellston, MI 49769

Carp Lake Township
10471 N. Hayes Lane
Carp Lake, MI 49718

Wawatam Township
PO Box 38
Mackinaw City, MI 49701

Munro Township
11637 Heilman Rd.
Levering, MI 49755

City of Mt. Pleasant
320 W. Broadway St.
Mt. Pleasant, MI 48858

Union Charter Township
2010 S. Lincoln Rd.
Mt. Pleasant, MI 48858

Isabella Township
3929 E. Rosebush Rd.
Rosebush, MI 48878

Village of Rosebush
3876 E. Rosebush Rd.
Rosebush, MI 48878

Vernon Township
10877 N. Lincoln Rd.
Clare, MI 48617

City of Clare
202 W. Fifth St.
Clare, MI 48617

Grant Township
8490 S. Grant Ave.
Clare, MI 48617

Sheridan Township
8110 Washington Rd.
Clare, MI 486147

Beaverton Township
5700 N. Lewis Rd.
Coleman, MI 48618

City of Beaverton
124 W. Brown St.
Beaverton, MI 48612

Grout Township
5134 Plude Rd.
Gladwin, MI 48624

City of Gladwin
1000 West Cedar Ave.
Gladwin, MI 48624

Gladwin Township
2001 Wagarville Rd.
Gladwin, MI 48624

Butman Township

5005 N. Hockady Rd.
Gladwin, MI 48624

Nester Township

7855 Maple Valley Rd.
St. Helen, MI 48656

Backus Township

3888 S. Maple Valley Rd.
St. Helen, MI 48686

Richfield Township

PO Box 128
St. Helen, MI 48656

Higgins Township

PO Box 576
Roscommon, MI 48653

Markey Township

4974 E. Houghton Lake Dr.
Houghton Lake, MI 48629

Gerrish Township

2997 E. Higgins Lake Dr.
Roscommon, MI 48653

Beaver Creek Township

8888 S. Grayling Rd.
Grayling, MI 49738

Grayling Charter Township

PO Box 521
Grayling, MI 49738

City of Grayling

1020 City Blvd.
Grayling, MI 49738

Frederic Township

PO Box 78
Frederic, MI 49733

Maple Forest Township

2520 W. Marker Rd.
Grayling, MI 49738

Otsego Lake Township

PO Box 99
Waters, MI 49797

Bagley Township

PO Box 52
Gaylord, MI 49735

City of Gaylord

305 E. Main St.
Gaylord, MI 49735

Chester Township

1737 Big Lake Rd.
Gaylord, MI 49735

Charlton Township

PO Box 367
Johannesburg, MI 49751

Vienna Township

2734 M-32
Atlanta, MI 49709

Briley Township

PO Box 207
Atlanta, MI 49709

Hillman Township

PO Box 25
Hillman, MI 49746

Village of Hillman

211 E. Second St.
Hillman, MI 49746

City of Midland

333 W. Ellsworth St.
Midland, MI 48640

Williams Charter Township

1080 W. Midland Rd.
Auburn, MI 48611

City of Auburn

113 E. Elm St.
Auburn, MI 48611

Monitor Township

2483 Midland Rd.
Bay City, MI 48706

Bay City

301 Washington Ave.
Bay City, MI 48708

Bangor Township
180 State Park Dr.
Bay City, MI 48706

Kawkawlin Township
1836 E.Parish Rd.
Kawkawlin, MI 48631

Fraser Township
1474 N. Mackinaw Rd.
Linwood, MI 48634

City of Pinconning
PO Box 628
Pinconning, MI 48650

Pinconning Township
PO Box 58
Pinconning, MI 48650

Standish Township
4997 Arenac Rd.
Standish, MI 48658

Lincoln Township
4641 Duprie Rd.
Standish, MI 48658

City of Standish
399 East Beaver St.
Standish, MI 48658

Deep River Township
525 E. State St.
Sterling, MI 48659

Arenac Township
438 W. Huron Rd.
Omer, MI 48749

City of Omer
201 E. Center St.
Omer, MI 48749

AuGres Township
1865 Swenson Rd.
AuGres, MI 48703

Mason Township
1199 N. Black Rd.
Twining, MI 48766

Turner Township
PO Box 22
Twining, MI 48766

Village of Twining
311 W. Main St.
Twining, MI 48766

Sherman Township
3165 Alabaster Rd
Tawas City, MI 48763

Alabaster Township
1716 S. US Hwy 23
Tawas City, MI 48763

Grant Township
4049 W. Indian Lake Rd.
National City, MI 48748

Tawas Township
27 S. McArdle Rd.
Tawas City, MI 48763

Tawas City
PO Box 568
Tawas City, MI 48764

Wilber Township
3120 Sherman Rd.
East Tawas, MI 48730

Au Sable Township
311 5th St. N
Au Sable, MI 48750



The University of Michigan

Risk Management Services

Argus II Building
400 S. Fourth Street
Ann Arbor, MI 48103-4816
Office: 734-764-2200
Facsimile: 734-763-2043

November 9, 2009

Re: Evidence of Insurance as respects sponsored activities of the University of Michigan
(including Merit Network)

To Whom It May Concern:

The following is provided as evidence of the University of Michigan Workers Compensation self-insurance program. This program is a fully funded, non-cancelable plan with the following limits.

Workers' Compensation Insurance	Statutory Limits
Employers Liability Insurance	\$1,000,000 each accident
	\$1,000,000 disease each employee
	\$1,000,000 disease policy limit

This letter constitutes our certificate of insurance as it applies to the sponsored activities of The University of Michigan.

Please let me know if you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Chip Hartke".

Chip Hartke
Risk Management Services
chartke@umich.edu

Date: October 6, 2010
To: Honorable Mayor and City Commission
From: Department of Public Works
RE: Richards Park License and Management Agreement

SUMMARY OF REQUEST: To approve an agreement with the Muskegon Conservation District to locate their main office on a portion of the Richards Park property.

FINANCIAL IMPACT: NONE

BUDGET ACTION REQUIRED: NONE

STAFF RECOMMENDATION:

To approve the agreement and to authorize the Mayor and Clerk to sign the agreement.

LICENSE AND MANAGEMENT AGREEMENT

THIS LICENSE and MANAGEMENT AGREEMENT is made this ____ day of _____, 2010, by and between City of Muskegon, a Michigan municipality, of 933 Terrace St., Muskegon, MI 49443 (the "City") and the Muskegon Conservation District, a local unit of state government, of 940 Van Eyck Street, Muskegon, MI 49442 (the "District").

RECITALS

WHEREFORE, the City is the owner of certain real property, commonly referred to as Richards Charter Park ("the Property"), legally described as:

The part of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 17, Town 10 North, range 16 West, City of Muskegon, Muskegon County, Michigan; lying Southerly of the North Channel of the Muskegon River; Easterly of CSX Railroad Right of Way and Westerly of State Highway US-31 Business Route; ALSO, Lot 1 of Block 545 and that part of Block 545 lying Westerly of State highway US-31 Business Route of the Revised Plat of 1903 of the City of Muskegon, Muskegon County, Michigan.

WHEREFORE, the Property is a charter park within the park system of the City, located at the intersection of Ottawa Street and Business Route 31 and Whitehall Road (adjacent to Causeway Park), consisting of approximately 7.5 acres; and

WHEREFORE, The District desires to locate their main office on the Property to increase the District's visibility in the community, highlight the natural resources of the area; and

WHEREFORE, The District desires to obtain the right to use a portion of the Property upon which to construct a building and associated infrastructure, not to exceed 3 acres in size ("the District's 3 acre footprint"), for purposes of a natural resource facility, including a central office, indoor & outdoor classroom, natural resource library, and meeting facilities, parking facilities, and garage / storage facilities; and

WHEREFORE, the City desires to obtain a site manager for the continued maintenance and stewardship of the Property; and

WHEREFORE, the City desires to transfer some maintenance responsibilities for the Property to the District; and

WHEREFORE, the District desires to enter into a long-term management agreement of the Property for natural resource demonstration projects, outdoor recreation opportunities, civic outreach, and youth / adult programs; and

WHEREFORE, the City desires to grant to the District herein, a license to use a portion of the Property; and

NOW THEREFORE, in recognition of their respective legal rights and in consideration of the mutual promises contained herein, the parties agree as follows:

License granted. The City does hereby grant the District a license to use the Property, provided the conditions hereinafter set forth are met. This license shall exist for 99 years and only so long as the Property is utilized by the District and this Agreement is not breached. During this period any structures may be improved to forestall obsolescence and extend term of agreement.

The City agrees to this license without fee or costs.

Covenants of the District. District shall, during the term of this Agreement, do and perform the following:

(a) The District shall construct a building that complies with all local, state, and federal ordinances and regulations; including but not limited to:

1. City of Muskegon building and zoning codes
2. Americans with Disabilities Act (ADA)
3. County Health Department regulations
4. Michigan Department of Environmental Quality permits.

(b) The District shall utilize the building to strengthen natural resource services in the community by providing technical expertise, civic outreach, youth / adult programs, and recreational opportunities for the public. Building uses shall include:

1. Central offices for the District
2. Classroom/Student Exploration Lab for youth / adult education
3. Public Natural Resource Library
4. Meeting/Conference Room(s) for public workshops
5. Outdoor facilities for natural resource activities

(c) The District shall operate the Property and all facilities and collect fees to offset costs to maintain and manage the Property; including but not limited to pavilion rentals, site management for special events, and building facility room rental. The City shall review all established fees for use of the Property's facilities located outside the District's building such as picnic shelter rentals, launch fees, camping fees, etc.

(d) The District shall operate the Property in compliance with City recommended hours. Under special circumstances, and with proper prior notice to the City, the District may operate the Property outside normal operational hours for special events (e.g., rustic camping).

(e) The District shall maintain the Property in an acceptable manner, including:

1. Plowing District facility parking lots and sidewalks;
2. Developing and maintaining a native landscape and habitat management plan for all areas;
3. Mowing designated grass areas with equipment provided by the City;
5. Picking up and properly disposing of garbage and litter on site;
6. Maintaining a public restroom;

(f) The District shall secure any and all required licenses and permits for the operation of facilities on the Property.

(g) The District shall provide the City with an annual report of all recreational activities held on the Property.

(h) The District shall be responsible for all utility charges; and manage and maintain all utilities inside the 3 acre footprint.

Annexation of Abonmarch Property. In the event that the City annexes any or all of the property adjacent to Richard's Park, commonly known as the "Abonmarch Property," the annexed property shall become part of the Property to which this agreement applies.

Improvements. Plans for any and all improvements proposed on the Property outside the District's 3 acre footprint must be approved by the City Manager prior to their construction or addition to the Property. Any and all improvements made to the Property outside the District's 3 acre footprint shall be the property of the City. These improvements may be maintained / managed by the District by amending this agreement to include specific maintenance / management terms. As feasible, the City and District shall partner to construct the following public recreation opportunities:

- (a) Canoe and kayak launch (non-motorized small boat launch).
- (b) Boardwalks and fishing platforms.
- (c) Picnic pavilion (including power and water).
- (d) Public restroom.
- (e) Community gardens and demonstration plots.
- (f) Interpretive signage.
- (g) Trailhead for public access to bike path.

Covenants of the City. City shall perform the following activities:

- (a) Provide the District with adequate space (3 acres) to construct and maintain a building and the associated infrastructure for the purposes of, but not limited to; office space, classroom/large conference room, public natural resource library. This designated area on the Property shall be provided to the District for 99 years and only so long as the Property is utilized by the District and this Agreement is not breached.
- (b) The City shall coordinate placement of the building, associated infrastructure, and other park improvements with the District to ensure activities do not impact other city/county infrastructure uses on site (sewer, water, gas, electricity)
- (c) The City shall maintain all utilities outside the 3 acre District footprint.
- (d) The City shall maintain traffic signs and historical marker.
- (e) The City shall continue to provide the picnic tables and trash cans as currently provided on the effective date of this agreement.
- (f) The City shall provide public safety for the site.
- (g) The City shall snow plow major entrance routes.
- (h) The City shall provide and maintain equipment for lawn areas and the District shall be responsible for mowing the lawn.

Financial Self-Sufficiency. The parties agree that a shared goal is to achieve financial self-sufficiency for operation of the Property. To that end, the District may establish permit fees to offset costs to maintain and manage the Property including, but not limited to, pavilion rentals, site management for special events, and building facility room rental.

No interest in land conveyed. Nothing in this Agreement shall be deemed to include or grant any right, title, interest, claim or demand in or to the Property or any improvements thereon, other than the right to construct, occupy and maintain a natural resource facility pursuant to the terms and conditions of this Agreement. Any improvements placed on the Property remain the property of the District and may be removed from the Property upon revocation of this license by the City.

Hold Harmless and Indemnify. The City is not responsible for any injuries incurred during construction of the natural resource facility (building, structures, or associated infrastructure) on the Property, or for any subsequent damage to said building, structures, or associated infrastructure. The District agrees to indemnify and hold harmless the City from any claim, loss, expense, damage or liability suffered by the City

as a result of the construction of the building, structure, or associated infrastructure, on the Property. The District further agrees to indemnify and hold harmless the City from any liability incurred during the District's operations on the Property.

Severability. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be impaired or affected.

Binding Effect. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties and their respective legal representatives, agents, employees and/or permitted successors and assigns.

Entire Agreement. This Agreement shall constitute the entire agreement, and shall supersede any other agreements, written or oral, that may have been made or entered into, by and between the parties with respect to the subject matter of this Agreement and shall not be modified or amended except in a subsequent writing signed by the party against whom enforcement is sought. All contemporaneous or prior negotiations and representations have been merged into this Agreement.

Amendments. This Agreement may be modified or amended only by written instrument signed by both parties.

Term. Subject to the termination provision of this agreement and other aforementioned provisions, it shall commence _____ and be in effect for 99 years, with an annual review to facilitate partnership, management, and maintenance of the Property. Management and Maintenance of the Property outside the District's 3 acre footprint shall commence upon occupancy of a building on the Property.

Annual Review. The City and the District will meet annually to discuss the current and future operation of the Property and to review and plan any future modifications or improvements to the facility, including the application for grants for the enhancement of the Property and its facilities.

Insurance. The District shall, at its cost, procure and maintain during the term of this agreement the following insurance policies, naming the City as an additional insured, and maintaining policies that provide the City shall receive at least thirty (30) days notice prior to cancellation:

- (a) Comprehensive general public liability insurance single limit in the minimum amount of \$1,000,000.
- (b) Motor vehicle liability in the minimum amount of \$1,000,000.
- (c) Worker's Compensation Insurance covering all persons deemed to be employees of the District by law.

All policies of insurance shall be evidenced by certificates and shall be placed with insurance companies acceptable to the City and licensed to do business in the State of Michigan. Said insurance shall be kept in force and new certificates supplied for substituted or renewed insurance.

Termination. This Agreement may be terminated by the City or District upon furnishing the non-terminating party written notice of termination not less than ninety (90) days prior to the effective date of termination, excluding the District's 3 acre footprint, which the District may maintain and occupy until said building and infrastructure is not utilized by the District. The City will compensate the District for any building, structure, and associated infrastructure, at fair market value, should the city gain control of structures within the 3 acre District footprint through legal takings (i.e., eminent domain).

In the event the associated management / maintenance outside the District's 3 acre footprint is terminated, all access to the facility for vehicles and utilities will continue without interruption, the area of the license agreement will automatically expand to include the established access easement and the District shall assume responsibility for maintenance of said easement.

Governing Law. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties hereto agree that as a result of their mutual negotiations and understandings, that any ambiguity shall not be construed automatically against either party.

Counterparts. This Agreement may be executed in counterparts, and each set of duly delivered identical counterparts, which includes all signatories, shall be deemed to be one original document.

Full Execution. This Agreement requires the signature of both parties. Until fully executed, on a single copy or in counterparts, this Agreement is of no binding force or effect and if not fully executed, this Agreement is void.

Non-Waiver. No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of this Agreement.

No Reliance. Each party acknowledges that it has had full opportunity to consult with such legal and financial advisors as it has deemed necessary or advisable in connection with its decision knowingly to enter into this Agreement. Neither party has executed this Agreement in reliance on any representations, warranties, or statements made by the other party hereto other than those expressly set forth herein.

Assignment or Delegation. Except as otherwise specifically set forth in this Agreement, the District shall not assign all or any portion of its rights and obligations

contained in this Agreement without the express prior written approval of the City, which approval may be withheld at the City's sole discretion.

Venue. The parties agree that for purposes of any dispute in connection with this agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

Terms. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

Fax or Electronic Signatures. The parties have agreed that electronic or fax copies of the signed Agreement shall constitute a valid, enforceable agreement. Each party will mail originals to the respective party upon their execution of this Agreement.

Notices. Any notice that either party may give or is required to give under this agreement shall be in writing and, if mailed, be effective three days after being sent by U.S. Mail with adequate postage, addressed to the other party at the other party's address set forth in this Agreement or at any other address that the other party provides in writing. Notices shall be effective on the date of receipt, if given by hand, express delivery or recognized courier service.

**RECEIPT OF A COPY OF THIS CONTRACT IS ACKNOWLEDGED BY THE CITY OF
MUSKEGON AND THE MUSKEGON CONSERVATION DISTRICT.**

This Agreement was entered into on the date set forth above.

BY:

City of Muskegon,
a Michigan municipal corporation

Muskegon Conservation District, a local unit
of State government

Stephen J. Warmington, Mayor

E. Paul Schroeder, Chair

Ann Marie Becker, MMC, Clerk

Joseph Hill, Secretary

Date: October 12, 2010

To: Honorable Mayor and City Commissioners

From: Finance Director

RE: Consideration of 2011 COLA for Retirees

SUMMARY OF REQUEST: It is time to consider whether an annual cost of living adjustment (COLA) should be awarded to city retirees. Under the city's COLA program, permanent cost of living increases are made to pensioners retired five years or more. COLA payments are capped at 75% of the CPI and are payable only when investment performance exceeds estimates and the COLA is deemed affordable. The last COLA was in 2009, when a 0.50% COLA was granted.

The collapse of the financial markets in late 2008 continues to take a big toll on the City's pension funds as noted in the most recent actuarial valuation:

"If the December 31, 2009 valuation results were based on market value on that date instead of 10-year smoothed funding value: i) the funded percent of your entire municipality would be 79% (instead of 99%); and ii) your total employer contribution requirement for the fiscal year starting July 1, 2011 would be \$4,165,116 (instead of \$1,152,252). If the investment markets do not fully make up for the 2008 losses, employer contribution requirements can be expected to rise. MERS continues to do everything it can to make sure that if this proves to be the case, the increases are incremental as opposed to steep."

Given the unprecedented economic and investment environment we are in and the severe market losses suffered by the City's pension funds, staff recommends no retiree COLA be awarded for the year beginning January 1, 2011.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Commission action affirming staff's recommendation that no COLA increase be granted to City retirees in 2011.